



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 17, 1998

Ms. Linda Wiegman  
Supervising Attorney  
Office of General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR98-1953

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117491.

The Texas Department of Health (the "department") received a request for the name of a complainant whose report regarded operations of a food service establishment regulated under Chapter 437 of the Health and Safety Code. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code, in conjunction with the informer's privilege doctrine. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Texas courts long have recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Open Records Act. Open Records Decision No. 549 at 4 (1990). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public

interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

Although the informer's privilege aspect of section 552.101 ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 285 at 1 (1981), 279 at 1-2 (1981); *see also* Open Records Decision No. 208 at 1-2 (1978). This may include enforcement of quasi-criminal civil laws. *See* Open Records Decision Nos. 515 at 3 (1988), 391 at 3 (1983). The privilege excepts the informer's statement itself only to the extent necessary to protect the informer's identity. Open Records Decision No. 549 at 5 (1990). However, once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. Open Records Decision No. 202 at 2 (1978). For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 515 at 2-5 (1988), 391 (1983).

You have provided a copy of Complaint Injury Report 99040, with line 2b highlighted. We are of the opinion that this is a report of a violation of a statute that is within the purview of the department's enforcement authority under Title 2, Chapter 12 of the Texas Health & Safety Code. You have stated that to the best of your knowledge the informer's identity is unknown to the requestor. We conclude that the information you have marked may be withheld under the informer's privilege as incorporated by section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 117491

Enclosures: Submitted documents

cc: Ms. Sheri Zimmerman  
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(w/o enclosures)